



Office of the City Auditor

Immigration Reform and Control Act Compliance Audit Report No. 0405

December 21, 2004

Procedures provide reasonable assurance that the City will comply with requirements to verify eligibility and identity prior to hire. Establishing written procedures and providing periodic training to employees responsible for the completion of documentation will improve compliance.

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December 21, 2004

To the Most Honorable Mary Manross, Mayor
and Members of the Scottsdale City Council

Transmitted herewith is a report on compliance related to the Immigration Reform and Control Act. Staff in Human Resources was very cooperative during our audit and we would like to thank them for their assistance.

If you need additional information or have any questions, please contact me at 480-312-7756.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cheryl Lee Barcala". The signature is written in dark ink and is positioned above the printed name and title.

Cheryl Barcala, CPA, CIA, CFE, CGFM, CISA, CISSP
City Auditor

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EXECUTIVE SUMMARY

Procedures, currently in place, provide reasonable assurance that the City will comply with the Immigration Reform and Control Act of 1986 (Act). An Employment Eligibility Verification Form (I-9 Form or I-9) could be presented for all 190 employees in our sample hired between January 2000 and October 2004. Out of the entire sample of 400 employees, all but 54 I-9s could be presented; all missing forms related to employees hired before 1999.

The Human Resources Department (HR) was aware, before our audit, that I-9 Forms have not been retained for some employees. Internal file reviews conducted in 2002 and 2003 identified the situation and an action plan has been prepared to address the issue. As part of the actions taken, the need for additional training was identified and clarification on the requirements for retention was obtained. HR staff also identified the need to implement a tracking system to monitor work authorizations that expire and situations in which an employee may submit a receipt to prove that documents have been requested but must still present the originals.

Our audit validates the work completed by HR staff and supports the need for additional training. Of 346 I-9 Forms reviewed, we found multiple instances in which I-9s were not completed accurately. Trend analysis substantiates a conclusion that the volume of errors has reduced in more recent years, but 17 percent of the I-9s reviewed for 2003 and 2004 had information such as hire date or date completed missing from Part 2 of the I-9 Form. Correspondingly, 24 percent of the I-9s reviewed for 2004 had information missing from Part 1 and 16 percent of the I-9s reviewed for 2003 had similar errors.

Finally, while testing supports a conclusion that the risk of continuing to hire an employee with an expired work authorization is low, we did find one employee, out of the 346 I-9 Forms presented, in which the work authorization had expired and no re-verification was made.

ACTION PLAN

| No. | Recommendations and Management Response |
|-----|---|
| | The General Manager of Human Resources should direct staff to: |
| 1 | <p>Develop a training program that can be used to train employees that will be responsible for ensuring completion of the I-9 Form or for updating existing I-9 Forms. As part of this training program:</p> <ul style="list-style-type: none"> a. Educate employees on the requirement that documents must meet the criteria set out for compliance. b. Educate employees on the importance of ensuring that the I-9 Form be filled out properly. c. Provide an appropriate amount of training in the detection of fraudulent documents. d. Develop and provide a reference guide that includes the instructions, current list of acceptable documents, and other guidance published by Immigration Services as well as examples of acceptable/unacceptable documents. |
| | <p>Management Response: Agree/Completed. Human Resources staff has developed a comprehensive training program, as outlined above.</p> <p>Responsible Party: Human Resources Completed By: Completed/Ongoing</p> |
| 2 | <p>Develop and implement a tracking system that will serve to timely identify employees whose work authorization will expire and those employees that present receipts instead of original documents and implement procedures sufficient to ensure that documentation is obtained before either the expiration of the work authorization or the period allowed to obtain documentation.</p> |
| | <p>Management Response: Agree/Completed. Human Resources staff has thoroughly reviewed and revamped the procedures for tracking timely identification of employees whose work authorization will expire. This includes development of a database to more accurately track the data. In addition, staff training now includes resources that can be referenced at the point of intake to address authenticity concerns relative to the various documents which may be presented by the employee at that time.</p> <p>Responsible Party: Human Resources Completed By: Completed/Ongoing</p> |
| 3 | <p>Modify the information presented in the New Employee Handbook to include the instructions, an I-9 Form that includes the required boxes, and an updated list of acceptable documents.</p> |
| | <p>Management Response: Agree/Completed. Human Resources staff has incorporated the instructions and a revised form into the 2005 New Employee Workbooks, which addresses these concerns.</p> <p>Responsible Party: Human Resources Completed By: Complete/Ongoing</p> |

| No. | Recommendations and Management Response |
|-----|---|
| 4 | <p>Develop and document policy and procedures for completion of I-9 Forms. At a minimum, include:</p> <ul style="list-style-type: none"> a. Clarification as to when I-9 Forms will be updated (e.g., if a new I-9 will be requested when an employee transitions from part-time to full-time or job-share status). b. Procedures for updating the I-9 Form when an employee's name changes. c. Procedures for retaining documents and destroying those no longer needed. d. Procedures for following up and obtaining documentation when: <ul style="list-style-type: none"> i) A receipt is provided at time of hire. ii) When work authorization is temporary. |
| | <p>Management Response: Agree/Completed. Human Resources staff has thoroughly reviewed the document policy and procedures for completion of I-9 Forms and implemented new practices, including establishing a comprehensive I-9 Program Maintenance and Tracking Process.</p> <p>Responsible Party: Human Resources Completed By: Complete/Ongoing</p> |
| 5 | <p>Expand the internal audit process to include a review of I-9s completed during the previous year to identify situations in which re-training may be necessary.</p> |
| | <p>Management Response: Agree/Completed. Human Resources staff has incorporated the I-9 requirements into our annual internal audit of files, which will allow for identification of systematic issues that can be addressed through additional training. Re-training opportunities will also be identified on an annual basis to ensure compliance with I-9 requirements and/or changes to the law. Human Resources staff will incorporate applicable changes to provide continuous improvement.</p> <p>Additionally, implementation of the Program Maintenance and Tracking Process will ensure a thorough review of the I-9 Forms received for completeness and accuracy; if deemed unacceptable, forms will be returned to the intake agent for correction and/or related follow through with the employee. Patterns or trends observed by staff will be noted and supplemental or periodic review training sessions will be conducted as indicated.</p> <p>Responsible Party: Human Resources Completed By: Complete/Ongoing</p> |

BACKGROUND

The Act requires employers to verify identity and employment eligibility as a means of ensuring that persons hired can legally work in the United States. Requirements became effective for individuals hired after November 6, 1986. The City must ensure that, no later than three days from the hire date, an I-9 Form is completed for every new hire. As part of this process, a City representative must examine either 1) a document that verifies identity and employment eligibility (e.g., a U.S. Passport) or 2) one document that verifies identity and one document that verifies eligibility to work (e.g., a driver's license and an original [or certified copy] of a birth certificate).

The I-9 Form, the instruction page that provides guidance on requirements, and a list of acceptable documents is to be provided to the new hire. The employee completes Part 1 of the I-9 and chooses the documents to be provided. The City representative reviews Part 1 to ensure that it is properly completed, reviews the documentation for acceptability, and completes Part 2.

The employee has the sole discretion when selecting the documents that will be presented as long as 1) the documents are originals and 2) they meet the criteria set out. The City cannot refuse to accept certain documents or demand to see a document that is not presented. However, the City must refuse documents that do not appear to be genuine as well as those that do not appear to relate to the employee being hired. If the employee cannot provide the appropriate documentation at the time of hire, a receipt may be presented to evidence that a request has been made. The employee then has ninety days to present the documentation.

After completion, the I-9 Form must be retained for the period of employment plus one year after termination but no less than three years. The I-9s must be produced at the request of the United States Citizenship and Immigrations Services Bureau (CIS). The Act provides for at least three days advance notice of an inquiry but does not preclude the use of other means to compel presentation of the documents in a shorter time period.

Anti-discrimination and miscellaneous rules

The Act prohibits employment discrimination. The City cannot require certain documents in order to ensure that only United States citizens are hired. Similarly, the City cannot refuse to hire someone who presents correct documents that expire at a future date to avoid the administrative tasks required to follow up and re-verify employment eligibility.

This means that processes must be in place to ensure that all individuals are treated the same when completing the I-9 Form. For example, the point in time in which the I-9 is completed must be the same for all employees. As well, if the City requires an employee to update the I-9 Form when transitioning from part-time to full-time, all employees in the same situation must be required to complete an updated I-9.

The Act does not require the City to make copies of documentation presented when completing the I-9 Form nor does it prohibit it. If, however, a decision is made to make copies, the process must ensure that all employees are treated in the same manner. Similarly, the Act does not require the City to obtain documentation for employees hired before November 1986. If, however, the City elected to undertake this effort, documentation must be requested for all employees hired before this date.

Penalties for Non-Compliance

The Act is known as an employer sanctions law because it imposes penalties when correct documentation is not reviewed or in situations in which the required I-9 Form cannot be presented. It also provides for the imposition of sanctions when employers discriminate against persons who have correct employment authorization but are not United States citizens.

If a non-eligible employee is hired, civil monetary penalties of not less than \$250 but not more than \$2,000 for the first offense, not less than \$2,000 but not more than \$5,000 for the second offense, and not less than \$3,000 but not more than \$10,000 for subsequent offenses may be imposed. Each fine is applicable to each unauthorized individual employed. If the required I-9 Forms are not retained or not made available for inspection as required by law, monetary penalties of not less than \$100 but not more than \$1,000 for each employee for whom the I-9 was not made available and/or properly retained, may be imposed.

Employees who use fraudulent identification for the purposes of satisfying employment eligibility may be fined or imprisoned up to five years, or both.

Practices at the City and Monitoring Efforts

To ensure compliance, HR has incorporated the completion of the I-9 into the new employee orientation process. The I-9 Form and list of acceptable documents is included in the New Employee Handbook and instructions tell the employee to complete the I-9 and bring documentation to the orientation. A staff person in HR reviews the I-9 Form and documents submitted and completes Part 2. There is an exception to this process; Supervisors in the

Parks and Recreation Division of the Community Services Department conduct the orientation for some of the Parks and Recreation staff.

If an employee does not present acceptable documentation at the orientation, the City representative instructs the employee that it must be presented by 5 p.m. on the third day of his/her employment or he/she will be unable to return to work. A written notice is also sent to the employee and the department head using the City's e-mail system.

At HR, the I-9 Form is kept in a centralized file room that has restricted access. The I-9s are filed separately from the personnel folder to facilitate review and presentation if a request is made. The originals are filed alphabetically in folders separated according to the alphabet. If an employee is terminated, the I-9 is removed and put in a three-ring binder kept by year of termination. Similarly, if a name change is submitted, the I-9 is pulled, the new name noted on the I-9 Form, and re-filed under the new last name.

In the later part of 2001, HR management staff initiated a review of the process in place to track the receipt of the I-9. As part of this internal review, it was discovered that many I-9 Forms had been destroyed. In 2002, a comprehensive file room audit was initiated and in 2003 the audit was finalized. At the conclusion of this effort, a project plan was put together to obtain missing I-9 Forms. Changes in staffing, however, delayed the completion of the project and in January 2004 another file room audit was completed to update the list of employees without correct documentation. In February 2004, the project was re-assigned with a revised project plan drafted. Current plans project the completion of the project prior to December 2004. As part of the process, HR staff is re-training personnel in Parks and Recreation. As well, reference sheets, noting acceptable types of identification, will be provided to staff undertaking the responsibility to ensure that the I-9 is completed properly. Finally, retention requirements have been clarified and the Human Resources Retention Schedule has been updated to include the required time period.

Other than the internal reviews conducted by HR staff, no other process review or audit has been completed.

RESULTS

OBJECTIVE: Determine if the City is in compliance with requirements to verify eligibility and identity prior to hire.

Finding: Procedures provide reasonable assurance that the City will comply with requirements to verify eligibility and identity prior to hire. Establishing written procedures and providing periodic training to employees responsible for the completion of documentation will improve compliance.

Criteria: A properly completed I-9 Form should be presented for each current employee hired after November 6, 1986. To be considered properly completed, Part 1 should contain all required information with the signature of the employee and date. Part 2 should outline the documents reviewed, contain the date of hire, and evidence the signature of the City representative reviewing the documents and the date reviewed. Documents listed should meet the criteria set for acceptable documents and list the expiration date, if any. If work authorization has expired, the I-9 should be updated or a new I-9 should be included with current work authorization.

To facilitate any reviews, I-9 Forms should not be kept in personnel files. If photocopies of documentation are maintained, this requirement should be consistently applied to protect against a potential discrimination claim.

According to federal law, both sides of the I-9 Form must be photocopied when an employer reproduces a blank I-9 so the employee has knowledge of the types of acceptable documentation. As well, the instruction page is to be provided to the employee during completion of the I-9 Form.

Condition:

Compliance with requirements as it relates to provision of information

We reviewed the documents provided to the employee at the point of hire to ensure that all information required to be made available, was included in the Workbook. The information includes the I-9 Form and the list of acceptable documents. It does not, however, include the instructions on how to complete the I-9 Form. The Handbook instructs employees to complete Part 1 of the I-9 prior to orientation. As a result, the employee is placed in a situation that requires them to fill out the I-9 without having access to the instructions.

Retention of required I-9 Forms

We selected a random, stratified¹ sample of 400 current employees hired subsequent to the date the requirement came into effect. The sample consisted of 78 employees hired in calendar years 2003 and 2004, 146 employees hired in calendar years 1999 through 2002, 125 employees hired in calendar years 1992 through 1998, and 51 employees hired between November 1986 and December 1991.

For the 51 employees hired prior to 1992, only 4 I-9s could be located. Three of these were dated in 1995 or later and one was not dated. For the 125 employees hired between 1992 and 1998, 119 I-9 Forms could be located. For the period 1999 through 2002 all but one I-9 could be located. All 78 I-9s for employees hired in 2003 and 2004 could be located. All employees without I-9 Forms in the file had already been identified by HR staff and included on a list for follow up.

Presence of all required information

We reviewed I-9s to verify that all required information was present. We looked for employee information, signature, date, and evidence of the documents reviewed. We also looked for signature of the employee conducting the review, the date completed, and the hire date. Of the 346 I-9 Forms reviewed, 78 were from 2003 and 2004 and 268 were from November 1986 through 2002.

Of the 78 selected from 2003 and 2004:

- 16 did not contain all the information required for Part 1
- 8 did not list the hire date
- 4 did not have the date the I-9 was completed by the City representative
- 1 was not signed by the City representative

Of the 268 selected between 1986 and 2003:

- 50 did not contain all the information required for Part 1
- 79 did not list the hire date
- 19 did not have the date the I-9 was completed by the City representative
- 7 were not signed by the City representative

¹ Stratification ensured that the sample reflected the population of current employees.

All 346 I-9 Forms included information about the documents reviewed. Information, however, was not consistently recorded in the correct columns and documents did not consistently include all the required information (i.e., details such as the issuing authority would not be listed).

In two instances, documentation listed did not meet the guidelines for acceptable documents (i.e., one Type A or one Type B and one Type C). In both cases, the documentation listed met the requirements considered “Type B” but did not satisfy the “eligible to work” criterion.

In one case, the I-9 listed a “Type A” document as a “Type C” document. If the document had been properly recorded, there would have been no need to list the second document.

Current work authorization

In one situation, the work authorization provided by the employee listed an expiration date. In this circumstance, the City was required to follow up and verify that the employee obtained current work authorization no later than the date the employee’s work authorization expired. This action did not occur and staff in HR acknowledged that a process is not in place to track any situation in which work authorizations expire.

Cause:

Missing documents

Based on review of information, the lack of documents for the period prior to 1992 appears to be the result of a misunderstanding in the requirements set for record retention. Evidence supports two purges of documents (one for all employees hired prior to May 1989 and one for all employees hired prior to 1992) using an interpretation that documents were required to be kept for three years after date of hire. Past practice has been to obtain new I-9s during the employee orientation process if an existing employee transitioned from a part-time position to a full-time position. As a result, there are employees with hire dates that fall into the time period covered by the purging, but with I-9 Forms on file.

Incomplete, missing, or incorrect information

The verification of information and completion of the I-9 is handled now and in the past by several employees (Benefits Representatives and departmental staff, for example) and training provided to these individuals has not been sufficient to ensure that I-9 Forms are correctly filled out. As well, HR staff acknowledged that these employees have not received training on how to determine if a document is “genuine” so that the employee would be somewhat knowledgeable when reviewing documents. Without adequate

training, staff may not understand nuances sufficiently well enough to be able to spot documents that are not genuine or make the distinction between which documents serve as proof of identity and those required for proof of employment eligibility. Baseline knowledge of these elements is an important component in compliance as the I-9 Form contains a certification statement to the effect that the employer representative "examined the documents listed... and they appear to be genuine."

Many I-9s were not considered complete because there was no response to a statement regarding employment eligibility. This situation exists because the I-9 included in the New Employee Workbook does not incorporate the boxes that need to be checked. As a result there is nothing to visually highlight the need for the response.

Finally, management has focused on ensuring that I-9 Forms are obtained. This oversight function is only one part of an effective monitoring function and must be combined with steps that periodically gauge the level of compliance as it relates to ensuring that I-9 Forms are completed properly.

Lack of current work authorization information

HR has not implemented a tracking process to identify situations in which information needs to be updated to ensure that employees continue to have appropriate authorization to work.

Effect: The City may not be able to mount a good faith defense should a question arise regarding compliance with requirements. According to instructions contained within the "Handbook for Employers," a good faith defense against the imposition of penalties requires the following:

1. Ensuring that employees fully and properly complete Part 1 of the I-9 Form at the time of employment.
2. Reviewing documentation to obtain reasonable assurance that the documents presented are genuine.
3. Ensuring that Part 2 is fully and properly completed and signed/dated by the employee completing the certification.
4. Retaining the I-9 Forms for the period required by law.

RECOMMENDATIONS

1. Develop a training program that can be used to train employees that will be responsible for ensuring completion of the I-9 Form or for updating existing I-9 Forms. As part of this training program:
 - a. Educate employees on the requirement that documents must meet the criteria set out for compliance.
 - b. Educate employees on the importance of ensuring that the I-9 Form be filled out properly.
 - c. Provide an appropriate amount of training in the detection of fraudulent documents.
 - d. Develop and provide a reference guide that includes the instructions, current list of acceptable documents, and other guidance published by Immigration Services as well as examples of acceptable/unacceptable documents.
2. Develop and implement a tracking system that will serve to timely identify employees whose work authorization will expire and as well as those employees that present receipts instead of original documents, and implement procedures sufficient to ensure that documentation is obtained before either the expiration of the work authorization, or the period allowed to obtain documentation.
3. Modify the information presented in the New Employee Handbook to include the instructions, an I-9 Form that includes the required boxes, and an updated list of acceptable documents.
4. Develop and document policy and procedures for completion of I-9 Forms. At a minimum, include:
 - a. Clarification as to when I-9 Forms will be updated (e.g., if a new I-9 will be requested when an employee transitions from part-time to full-time or job-share status).
 - b. Procedures for updating the I-9 Form when an employee's name changes.
 - c. Procedures for retaining documents and destroying those no longer needed.
 - d. Procedures for following up and obtaining documentation when:
 - i) A receipt is provided at time of hire.
 - ii) When work authorization is temporary.
5. Expand the internal audit process to include a review of I-9s completed during the previous year to identify situations in which re-training may be necessary.

SCOPE AND METHODOLOGY

The objective of this audit was to determine if the City is in compliance with requirements set under the Act as amended. The scope was limited to verifying compliance with requirements under the Immigration Reform and Control Act of 1986 and the review of internal control was limited to procedures that would function as control activities for compliance.

To complete the work, we reviewed documentation prepared by the U.S. Department of Justice setting out the criteria for compliance and interviewed staff in HR. We selected a random, stratified sample of employees hired subsequent to the effective date and pulled I-9 Forms from the files maintained by HR. When an I-9 could be located, information on the I-9 was reviewed to determine the level of compliance with requirements for all appropriate sections to be completed. We also verified that the documentation listed appeared to fall into the categories of acceptable documentation. At the conclusion of the test, questionable I-9s were reviewed with HR management to obtain further clarification.

Audit work was conducted in accordance with generally accepted government auditing standards as they relate to expanded scope auditing in a local government environment and as required by Article III, Scottsdale Revised Code, Section 2-117, *et seq.* Audit testing was completed during the month of October 2004 by Cheryl Barcala and Gail Crawford.

APPENDIX A – MANAGEMENT RESPONSE

MEMORANDUM

December 21, 2004

TO: Cheryl Barcala, City Auditor
FROM: Joyce Lira, Human Resources Director
Cyndi Coniam, Benefits and Administration Manager
RE: I-9 Compliance Audit 2004

The attached action plan is in response to the City Auditor's I-9 Program draft audit for compliance under the Immigration and Control Act of 1986 ("Act"). This Act requires all employees hired after Nov. 6, 1986 to provide, for inspection upon hire, original documentation establishing identity and eligibility to work in the United States.

Prior to and concurrent with the audit, HR initiated compliance reviews, process improvements and staff training to ensure ongoing compliance. We appreciate the additional suggestions that the City Auditor's office has made to further ensure our obligations under the Act. Most specifically, HR staff has concentrated on the following objectives:

- Improving the quality of the I-9 process to ensure all appropriate forms are fully complete and accurate and comply with dates as established by the Act;
- Providing for a systematic reverification process for those city employees with expiring eligibility status; and
- Establishing procedures for maintenance and destruction of I-9 information.

Thanks for your continued assistance to Human Resources throughout the audit. We are in agreement with the recommendations and pleased to report that all of the above objectives are implemented.

C: Jan Dolan, City Manager
Neal Shearer, Assistant City Manager